

Water Quality Standards Advisory Committee

Legislative Study Working Groups

MEETING MINUTES

Monday, May 10, 2010 9:00 am – 4:00 pm

Department of Environmental Services

Rooms 112/113/114

29 Hazen Drive, Concord, NH

General

The working groups thought that the WQSAC meeting in early September 2010 should be scheduled earlier. The purpose of the meeting would be to present the proposals from the working groups. WQSAC members would then have two weeks to consult with their constituents before having to approve the proposals at another WQSAC meeting.

Action Items

- DES will revise the schedule for the legislative study working groups.

Surface Water Definition Working Group

Attendees

Jillian McCarthy	DES	Mark Hutchins	Normandeau Assoc.
Andy Chapman	DES	Rep. Jim McClammer	House RR&D
Ken Edwardson	DES	Rep. Marcia Moody	House RR&D
Brandon Kernen	DES	Rep. Judith Spang	House RR&D, Chair
Phil Trowbridge	DES	Rep. Sue Gottling	House RR&D
Donald Ware	NHWWA	Eileen Miller	NHACD
MaryAnn Tilton	DES	John Boisvert	Pennichuck/NHWWA
John Lebre	BAE Systems	Gary Abbott	AGC
Shelly Frost	NH EnviroStrategies	Bob Ball	NHACC
Bill Schroeder	NH Lakes	Paul Currier	DES
Jason Stock	NHTOA	Ted Walsh	DES
Larry Morse	NHANRS	Ken Rhodes	CLD/AGC
Collis Adams	DES	Ellen Weitzler	EPA (by phone)
Allan Palmer	RMAC		

Issues discussed

Ted Walsh, staff to the working group, gave a brief summary of the issues related to the definition of “surface waters” and the proposed changes in HB 1305. A series of slides was also shown to depict how different surface water delineations can capture different wetland areas.

The issue of the Supreme Court Rapanos decision was discussed and how one would determine if a wetland had a “significant nexus” to traditional navigable waters. Given that

NH has its own Wetlands Rules it was discussed whether the Rapanos decision had a significant impact on NH and whether it should be considered when making any changes to statute or DES administrative rules.

Collis Adams reminded the group that the Clean Water Restoration Act being proposed in Congress could potentially make the Rapanos decision irrelevant by removing the term “navigable” when defining those waters under the jurisdiction of the Clean Water Act. He also reminded the group that NH rules can be more stringent than the federal rules but cannot be less stringent.

The issue of how the anti-degradation rules would apply to wetlands if the definition of “surface waters” included all delineated wetlands was discussed and how DES would assess wetlands in implementing anti-degradation. Paul Currier gave a brief description of DES’s progress in developing wetland assessment methods and that we are only at the very beginning of the process.

Many in the group supported that idea that DES be consistent in its definitions throughout the administrative rules and it was suggested that a more thorough check be done to ensure that any changes proposed in HB1305 would resolve these inconsistencies. A number of members of the group supported the idea of ignoring the “significant nexus” test when developing consistency in statute and rules. Another common interest was ensuring that DES did not have to keep changing its administrative rule whenever there was a change at the federal level.

Organization

Larry Morse was elected as Chairperson of the Surface Water Definition Working Group. The next meeting was tentatively scheduled for May 26, 2010.

Action items

- DES will provide more information to the group regarding the inconsistencies in NH statute and rules.

Antidegradation Working Group

Attendees

Jim Fitch	Woodard & Curren	Rep. Sue Gottling	House RR&D
Bob Ball	NHACC	John LeFebvre	BAE Systems
Gary Abbot	AGC of NH	Donald Ware	NHWWA
John Boisvert	Pennichuck/NHWWA	Mary Anne Tilton	DES
Eileen Miller	NHACD	Paul Currier	DES
Donna Hanscom	NHWPCA	Jeff Andrews	DES
Bill Schroeder	NH Lakes	Andy Chapman	DES
Larry Morse	NHANRS	Brandon Kernen	DES
Allan Palmer	RMAC	Ted Walsh	DES
Ken Rhodes	CLD/AGC	Eric Williams	DES
Mark Hutchins	Normandeau Assoc.	Jacquie Colburn	DES
Rep. Judith Spang	House RR&D	Jillian McCarthy	DES
Rep. Marcia Moody	House RR&D	Phil Trowbridge	DES
Rep. Jim McClammer	House RR&D		

Issues discussed

Jillian McCarthy, staff to the working group, gave a brief summary of the issues related to antidegradation and reminded the attendees that the language proposed in HB 1305 relative to antidegradation is specific to the federal requirements of antidegradation and does not include implementation.

Rep. Judith Spang asked how social and economic justification (SEJ) decisions are made. Mr. Paul Currier explained that the Water Quality Standards Advisory Committee (WQSAC) recently worked on those sections of the Water Quality Standards (WQS) in Env-Wq 1700 to better outline the SEJ process. It was modeled it after the social and economic justification process in Pennsylvania.

The group discussed the de minimus threshold for antidegradation in Env-Wq 1700 and asked for the citation in the federal regulations. Mr. Paul Currier responded that the de minimus threshold is not part of the federal regulations. He explained that the states developed de minimus thresholds to make implementing antidegradation more feasible. EPA has accepted the states' water quality standards that include this de minimus. There was some discussion on adding specific language to the statute to justify using a de minimus, but the group decided that keeping the statute the same as the federal language was a better approach.

Mr. Bill Schroeder stated that the language in HB 1305 specifies existing uses to be maintained and protected. He asked if designated uses should be added. The group all agreed that designated uses should be added.

The group asked for the federal Clean Water Act reference to antidegradation in addition to 40 CFR 131.12. Mr. Jeff Andrews stated that the origins of antidegradation are in Section 101 (a) to restore and maintain the chemical, physical, and biological integrity of the nations waters.

Mr. Ken Rhodes pointed out that the federal language in 40 CFR 131.12 has four sections, but the proposed language in HB 1305 has five sections. Mr. Jeff Andrews responded that

the fifth section in HB 1305 was taken from section two of 40 CFR 131.12 and is from the federal language even though it is out of order. Mr. Ken Rhodes stated that the mention of “existing point sources” in both the federal language and proposed language in HB 1305 makes people nervous.

Mr. Larry Morse explained that at the hearings for HB 1305 some people questioned whether DES had the authority to adopt rules for antidegradation without a statute in place. He added that having antidegradation in statute would correct that.

Organization

Ken Rhodes was elected as Chairperson of the Antidegradation Working Group. The next meeting date was tentatively scheduled for May 26, 2010.

Action items

- DES will add “designated uses” to the relevant sections of HB 1305.
- DES will provide the working group with an update of the proposed rule changes to Env-Wq 1700 related to antidegradation and the social and economic justification process.

Designated Uses Working Group

Attendees

Bill Schroeder	NH Lakes	Rep. Sue Gottling	House RR&D
Jasen Stock	NHTOA	Rep. Judith Spang	House RR&D, Chair
John Hodsdon	NH Farm Bureau	Paul Currier	DES
Jim Fitch	Woodard & Curran	Jacquie Colburn	DES
Mark Hutchins	Normandeau Assoc.	Phil Trowbridge	DES
Eileen Miller	NHACD	Jillian McCarthy	DES
Donald Ware	NHWWA	Ken Edwardson	DES
John Boisvert	Pennichuck/NHWWA	Brandon Kernen	DES
Rep. Jim McClammer	House RR&D	MaryAnn Tilton	DES
Rep. Marcia Moody	House RR&D	Paul Susca	DES

Issues discussed

Jacquie Colburn, staff to the working group, gave a brief overview of the issues:

1) New Hampshire's designated uses are not clearly outlined in either statute or rule and only exist in the CALM guidance document; and, 2) DES would like to add "geomorphic integrity" as a new designated use. Paul Currier explained that New Hampshire, like many northeastern states, adopted water quality standards and a classification system before the implementation of the federal Clean Water Act (CWA) in 1972. New Hampshire adopted its classification system around 1947, therefore there is little to no relationship between the state's classification system and the CWA.

Bill Schroeder said that the term "designated uses" is confusing to the general public; people interpret it to mean that only certain uses are allowed on our surface waters. The group discussed the pros and cons of the existing system where the designated uses apply to all surface waters versus listing designated uses according to specific waterbody types. John Hodsdon asked if a use is allowed even if it is not listed, for example, agriculture is not listed but it is an existing ongoing use. Paul Currier confirmed that uses are allowed and should be protected even if they are not specifically listed.

Paul Currier explained that DES has developed a "Waterbody Catalog", at a scale of 1:24,000 for all surface waters. The Catalog will be presented to the Legislature at a future date and the existing classification system could be overhauled. Paul added that DES needs to develop criteria for the designated uses. Paul explained that of the seven existing designated uses, that DES has trouble with the – "drinking water supply-after adequate treatment", and that DES has never assessed for "wildlife". It may be possible to develop subcategories for the designated uses; this too would be presented to the Legislature at some point in the near future.

Bill Schroder pointed out that Vermont includes "aesthetics" as a designated use. Ken Edwardson indicated that New Hampshire, to some extent, addresses aesthetics because it considers algae scums as a criteria to meet the primary and secondary contact recreation designated uses.

Rep. Spang pointed out that we need to protect wildlife; we should characterize waterbodies and wetlands regarding the wildlife they can and should support. She also asked what authority does the State have regarding wildlife. Paul responded that water quality should not impact wildlife that spend all or part of their lifecycle in the water or that depend upon the water for a food source. For wildlife, we need to restrict the focus to the water quality needed by the species, not upland habitat requirements. Rep. Spang also said that we need to have Fish and Game participate in future discussions regarding wildlife.

Rep. McClammer recommended that the existing classification system be revisited and revised. Further, he suggested that a matrix be developed where the waterbody types are identified and the associated designated uses are listed. There was general consensus among the group that this would be a good next step.

The group also discussed the possibility of adding “geomorphic integrity” as a designated use, with several people questioning how it fits into the existing structure. Paul explained that to some extent, “geomorphic integrity” has been addressed by DES under the “aquatic life” designated use; however, its proposed application here is not only to riparian biological integrity but to address the potential impacts to human life by rivers that are not stable or are susceptible to significant flooding and/or erosion.

Jim Fitch indicated that he agreed with the concept of revising the existing classification system and designated uses because he thinks it is appropriate to consider other possible designated uses. The group agreed that sections I-IV as proposed in HB 1305 are okay. For the next meeting, the focus would be on wildlife, geomorphic integrity, and other possible designated uses. Paul Susca requested that the group visit the definition of drinking water supply as written. MaryAnn Tilton suggested that this work be cross checked against other statutes, specifically, that section of RSA 483 pertaining to instream flow.

Organization

Rep. Judith Spang was elected as Chairperson of the Designated Uses Working Group. The next meeting date was tentatively scheduled for May 26, 2010.

Action items

- DES staff will develop matrix which outline proposed waterbody types and their associated proposed designated uses.
- DES will make revisions to the relevant sections of HB 1305 to address the points, concerns mentioned by the attendees.

Enforcement Working Group

Attendees

Bill Schroeder	NH Lakes	John Boisvert	Pennichuck/NHWWA
Jasen Stock	NHTOA	Paul Currier	DES
Larry Morse	NHANRS	Jillian McCarthy	DES
Mark Hutchins	Normandeau Assoc.	Ken Edwardson	DES
Rep. Jim McClammer	House RR&D	Brandon Kernen	DES
Rep. Marcia Moody	House RR&D	MaryAnn Tilton	DES
Rep. Judith Spang	House RR&D, Chair	Ted Walsh	DES
Rep. Sue Gottling	House RR&D	Phil Trowbridge	DES
Eileen Miller	NHACD	Jacque Colburn	DES

Issues discussed

The group discussed the specific methods that might be used to enforce water quality standards in wetlands. The current practice for enforcing antidegradation in other waterbody types is loading and hydrograph analysis. The specific methods for assessing water quality in wetlands have not been developed.

The proposed language for RSA 485-A:12, I(b) raised some concerns due to its specificity regarding tree removal and regulating on the “potential for stormwater run-off”. The group agreed that the wording from “removing trees” to “run-off” was unnecessary, confusing, and should be deleted.

There was concern about how enforcement of water quality standards in wetlands might affect forestry that is permitted under other programs.

The group discussed the classification system of waterbodies, in particular the “none unless naturally occurring” clauses for Class A waterbodies. Any human activity in watersheds of Class A waterbodies is not technically legal under the current laws and rules. There was general interest in either revising the classification system or changing the rules (Env-Wq 1700) to address this problem.

The timeline for abating pollution of “municipal origin” in RSA 485-A:12,II is not less than 2 years. This timeframe reflected the original focus on wastewater treatment facilities that require significant funding and planning. Currently there are other pollution sources “of municipal origin”, such as road salt. Therefore, the group suggested deleting the sentence starting with, “If such pollution is of municipal origin...” from the proposed language.

Organization

No chairperson was elected for the Enforcement Working Group. The next meeting date was tentatively scheduled for May 26, 2010.

Action items

- DES will invite the NH Municipal Association and the Senate EE&D Committee to join the Working Groups.
- DES will distribute possible changes to Env-Wq 1700 to address Class A waterbodies.
- DES will modify the proposed changes to RSA 485-A:12 as agreed by the group.